

May 28, 2019

## EX PARTE PRESENTATION

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *Ex Parte* Presentation in IB Docket No. 06-160, *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*; RM-11768, *MVDDS 5G Coalition Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service*

Dear Ms. Dortch:

The MVDDS 5G Coalition<sup>1</sup> submits this letter to respond to comments filed in IB Docket No. 06-160 that disparage the efforts of MVDDS licensees to invest and innovate in the 12.2-12.7 GHz band ("12 GHz Band"). Current MVDDS licensees and their predecessors were winning bidders in FCC Auction 53 and have invested in the deployment of new services in the 12 GHz Band.<sup>2</sup> Through the MVDDS 5G Coalition, moreover, some of the auction winners have asked the FCC for permission to deploy two-way, 5G wireless services to make greater use of this licensed spectrum.<sup>3</sup> MVDDS licensees therefore have an interest in having the Commission "adopt a harmonized set of rules that strike the appropriate balance among competing uses" in the 12 GHz Band as part of the ongoing Direct Broadcast Satellite ("DBS") proceeding.<sup>4</sup>

But a handful of satellite operators have injected themselves into the DBS proceeding to oppose the Coalition's reasonable request for a holistic approach to the 12 GHz Band.<sup>5</sup> The

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<sup>1</sup> The Coalition's members are the following MVDDS license holders: Cass Cable TV, Inc., DISH Network L.L.C. ("DISH"), GO LONG WIRELESS, LTD., MDS Operations, Inc., MVD Number 53 Partners, Satellite Receivers, Ltd., SOUTH.COM LLC, Story Communications, LLC, and Vision Broadband, LLC.

<sup>2</sup> See *Multichannel Video Distribution and Data Service Spectrum Auction Closes: Winning Bidders Announced*, Public Notice, 19 FCC Rcd 1834 (2004).

<sup>3</sup> See Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (Apr. 26, 2016) ("5G Petition").

<sup>4</sup> See Comments of MVDDS 5G Coalition, IB Docket No. 06-160, at 7 (Mar. 25, 2019) ("MVDDS 5G Coalition Comments").

<sup>5</sup> See Reply Comments of AT&T Services, Inc., IB Docket No. 06-160 (Apr. 22, 2019) ("AT&T Reply Comments"); Reply Comments of WorldVu Satellites Limited, IB Docket No. 06-160 (Apr. 22, 2019) ("OneWeb Reply Comments"); and Reply Comments of SES

satellite operators accuse the 12 GHz auction winners of “hijack[ing]” the DBS proceeding while these satellite operators themselves demand access to the 12 GHz Band. The satellite operators suggest a future in which thousands of space stations occupy more than **18 gigahertz** of spectrum across multiple bands that might otherwise support terrestrial 5G.<sup>6</sup> In so doing, they have taken a scorched-earth approach to any licensees that may have competing interests in their chosen spectrum bands.<sup>7</sup> The satellite operators’ demands represent inefficient spectrum policy and should be rejected.

Contrary to the satellite operators’ attempt to downplay ongoing deployment, MVDDS licensees are building out services throughout the United States. The satellite operators have falsely suggested, for example, that there are no MVDDS subscribers;<sup>8</sup> that “MVDDS operators have consistently failed to use the 12 GHz band”;<sup>9</sup> or that MVDDS licensees have not built out their systems.<sup>10</sup> These claims are inaccurate. Despite the serious regulatory constraints on power, antenna height, and other operating parameters,<sup>11</sup> MVDDS licensees and lessees have begun deploying. And, the relevant buildout deadlines have not yet passed. As the Commission recognized when it extended the substantial service deadline, MVDDS licensees for years could not purchase usable equipment because “the record demonstrate[d] that there [was] a lack of viable, affordable equipment for MVDDS that can be deployed in the 12.2-12.7 GHz band.”<sup>12</sup>

In any event, long-overdue modernization of MVDDS operational constraints would provide 500 megahertz of spectrum that would support terrestrial services to U.S. consumers and businesses. It has been many years since the Commission has reexamined the 12 GHz

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Americom, Inc. and its Affiliates, IB Docket No. 06-160 (Apr. 22, 2019) (“SES Reply Comments”).

<sup>6</sup> See Amendment of WorldVu Satellites Limited, IBFS File No. SAT-AMD-20180104-00004 (Jan. 4, 2018).

<sup>7</sup> As SpaceX has noted, “OneWeb does not want to play by the rules, however. Instead, it seeks to have its amendment considered in several ongoing processing rounds by waiving the very rules designed to protect the orderly administration of the processing round system.” See Petition to Deny or Defer of Space Exploration Holdings, LLC, IBFS File Nos. SAT-LOI-20170301-00031 & SAT-AMD-20180104-00004 (Aug. 6, 2018).

<sup>8</sup> AT&T Reply Comments at 8.

<sup>9</sup> OneWeb Reply Comments at 1.

<sup>10</sup> SES Reply Comments at 4.

<sup>11</sup> See 47 C.F.R. §§ 101.1401 *et seq.*

<sup>12</sup> See *Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, Order, 25 FCC Rcd 10097, ¶ 10 (2010) (“[W]e find that the record demonstrates that there is a lack of viable, affordable equipment for MVDDS that can be deployed in the 12.2-12.7 GHz band.”).

Band. Ignoring terrestrial wireless services at this juncture would squander a valuable opportunity to implement durable reforms in this proceeding. That is why the MVDDS 5G Coalition has asked the Commission that “any rule reforms designed to increase DBS use of the 12 GHz Band should be undertaken with an eye to balancing other beneficial uses of the spectrum for two-way wireless services.”<sup>13</sup>

Against calls for balance, the satellite companies suggest that MVDDS participation is unwarranted and MVDDS licensees’ views should be ignored. But the Commission has an independent goal of securing U.S. leadership in 5G as expeditiously as possible. The Commission has correctly identified as a national imperative the need to expand broadband deployment and ensure U.S. leadership in 5G by “evaluat[ing] spectrum bands *in all ranges* and ensur[ing] that there is no gap in our policies in terms of *enabling new opportunities for flexible broadband use*.”<sup>14</sup>

MVDDS operators have a clear stake in any adjustments to the rules governing the spectrum that they occupy. MVDDS licensees competitively bid for their licenses at auction, whereas Non-Geostationary-Satellite Orbit (“NGSO”) operators received their authorizations without competitive bidding. MVDDS licensees therefore have strong investment-backed expectations regarding their spectrum usage rights. Further restrictions on those rights jeopardize MVDDS licensees’ expectations, and operations in the 12 GHz Band consequently will suffer. Moreover, the FCC has already made clear that any attempts by NGSO operators to enter the 12 GHz Band assume the risk that future Commission action to support terrestrial use of the band could result in additional conditions or restrictions on their operations.<sup>15</sup>

The 12 GHz Band represents 500 megahertz of mid-band spectrum possessing favorable characteristics for deploying terrestrial 5G services. Unless thoughtfully approached in a manner that considers all 12 GHz Band stakeholders’ interests, expanding

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<sup>13</sup> MVDDS 5G Coalition Comments at 2.

<sup>14</sup> *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Notice of Inquiry, 32 FCC Rcd 6373, ¶ 6 (2017) (emphasis added).

<sup>15</sup> See, e.g., WorldVu Satellites Limited Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System, Order and Declaratory Ruling, IBFS File No. SAT-LOI-20160428-00041, FCC 17-77 ¶ 6 (June 23, 2017) (“[T]oday’s conditional grant of OneWeb’s request does not preclude the Commission from initiating a rulemaking proceeding regarding the 12.2-12.7 GHz band ... any investments made toward operations in this band by OneWeb in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of such Commission actions.”)

DBS services could artificially constrain the deployment of terrestrial 5G operations in the 12 GHz Band. These issues can—and should—be aired in the DBS proceeding.

Respectfully Submitted,

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